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Attorney's Docket: 2002DE442

Serial No.: 10/537,556

Art Unit 1621

Response to Office Action of 10/13/2006

REMARKS/ARGUMENTS

The Office Action mailed October 13, 2006 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the Application to attend to housekeeping matters and to more clearly describe the invention. Claims 6 and 12 were amended to address formalities. In claim 6, the indefinite article "a" was replaced with the article "an". In claim 12, the well-known trademark "Coconut-PEG-7" was replaced with the term 'a C₁₂/C₁₄/C₁₆ alcohol polyglycol having 7 EO units' to more clearly describe the material. Support for the amendment to claim 12 may be found in Applicant's Specification on page 5 in line 2 of Example 1. It is not believed that any new matter was introduced by these amendments, and that no additional search is required by the office.

Claim 12 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention for the use of a trade mark or trade name to identify a non-ionic solvent. The rejection of claim 12 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention should be withdrawn in view of the above amendment which now refers to the non-ionic solvent as being a C₁₂/C₁₄/C₁₆ alcohol polyglycol having 7 EO units.

Claims 1-3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124). The rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reason that Smith et al. teaches away from the instant invention, and Smith et al. is at best silent on any non-ionic solvents claimed in the instant invention. Furthermore, no one skilled in the art would be motivated by the disclosure of Smith et al. to select any of Applicant's solvents based on the limited disclosure of Smith et al. which are

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ethylene glycols and propylene glycols and not the alcohols or polyglycols as recited in Applicant's claim 1. Smith et al. is directed to the discovery that a particular group of quaternary ammonium compounds which are insoluble in water and ethylene glycol and propylene glycol are soluble in combinations of water and alkylene glycol. An alkylene glycol is of the formula



Applicant's invention employs a non-ionic solvent which as recited in claim 1 is an alcohol or an ethoxylated alcohol with the general formula $R-O-(AO)_nH$, where R is alkyl or alkenyl group containing 8 to 22 carbon atoms, A is C_2H_4 or C_3H_6 and mixtures thereof, and n is a number from 0 to 20, nonylphenol or ethoxylated nonylphenol with the general formula C_9H_{19} -phenyl- $O-(AO)_nH$, where A and n are as defined above, and mixtures thereof. Nowhere in Applicant's claim 1 is an alkylene glycol; that is, where R is hydrogen recited.

The Examiner has failed to make a prima facie case of obviousness. And no one skilled in the art would be motivated based solely on the disclosure of the highly hydrophilic alkylene glycols of Smith et al. to select the more hydrophobic non-ionic alcohols and alkoxylated fatty alcohols or alkylphenols of the instant invention. One skilled in the art, reading Smith et al. would be directed away from the hydrophobic non-ionic solvents of the instant invention. Prior art references must be read as a whole and consideration must be given where the reference diverges and teaches away from the claimed invention. Proceeding contrary to accepted wisdom is strong evidence of non-obviousness. Therefore, the rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reason that Smith et al. teaches away from the instant invention and no one skilled in the art would be motivated to select any of Applicant's non-ionic solvents from the disclosure of Smith et al.

The rejection of claims 2 - 15 under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reasons given in support of claim 1 from which they depend.

It is respectfully submitted that, in view of the above remarks, the rejections under 35 U.S.C. §112 and §103 should be withdrawn and that this application is in a

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condition for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,



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